

GARY M. RESTAINO
United States Attorney
District of Arizona
JILLIAN BESANCON
Assistant U.S. Attorney
California State Bar No. 285869
Two Renaissance Square
40 N. Central Ave., Suite 1800
Phoenix, Arizona 85004
Telephone: 602-514-7500
Email: Jillian.Besancon@usdoj.gov
Attorneys for Plaintiff

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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

Ty O'Brien Shorty,

Defendant.

No. CR-23-08093-001-PCT-JJT

PLEA AGREEMENT

Plaintiff, United States of America, and the defendant, Ty O'Brien Shorty, hereby agree to resolve this matter on the following terms and conditions:

1. PLEA

The defendant will plead guilty to an Information charging a violation of Title 18, United States Code, Sections 1153, 2244(a)(5) and 2246(3), Abusive Sexual Contact of a Child, a Class A felony offense.

2. MAXIMUM PENALTIES

a. A violation of 18 U.S.C. §§ 1153, 2244(a)(5) and 2246(3) is punishable by a maximum fine of \$250,000, a maximum term of imprisonment of life, or both, and a term of supervised release of at least five years and up to life.

b. According to the Sentencing Guidelines issued pursuant to the Sentencing Reform Act of 1984, the Court shall order the defendant to:

1 (1) make restitution to any victim of the offense pursuant to 18 U.S.C.
2 § 3663 and/or 3663A, unless the Court determines that restitution would not be
3 appropriate;

4 (2) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
5 fine is not appropriate;

6 (3) serve a term of supervised release when required by statute or when a
7 sentence of imprisonment of more than one year is imposed (with the understanding that
8 the Court may impose a term of supervised release in all other cases); and

9 (4) pay upon conviction a \$100 special assessment for each count to
10 which the defendant pleads guilty pursuant to 18 U.S.C. § 3013.

11 (5) pay upon conviction an additional \$5,000 special assessment pursuant
12 to 18 U.S.C. § 3014(a), unless the Court determines that the defendant is indigent.

13 c. The Court is required to consider the Sentencing Guidelines in determining
14 the defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court
15 is free to exercise its discretion to impose any reasonable sentence up to the maximum set
16 by statute for the crime(s) of conviction, unless there are stipulations to the contrary that
17 the Court accepts.

18 **3. AGREEMENTS REGARDING SENTENCING**

19 a. Stipulation: Applicable Guideline and Base Offense Level. Pursuant to Fed.
20 R. Crim. P. 11(c)(1)(C), the United States and the defendant stipulate that the cross-
21 reference in U.S.S.G. § 2A3.4(c)(1) shall apply, and thus that the applicable sentencing
22 guideline is U.S.S.G. § 2A3.1. The United States and the defendant further stipulate that
23 the applicable base offense level is 30 pursuant to U.S.S.G. § 2A3.1(a)(2). The parties
24 have no agreements as to whether any Specific Offense Characteristics apply and remain
25 free to argue for their application or rejection.

26 b. Stipulation: Sentencing Range. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the
27 United States and the defendant stipulate that the defendant shall be sentenced to a term of
28 imprisonment of no less than 17 years. The United States and the defendant further

1 stipulate that the defendant shall be sentenced to a term of imprisonment of no more than
2 25 years or the low end of the sentencing range as calculated under U.S.S.G. § 1B1.1(a),
3 whichever is greater.

4 c. Recommendation: Acceptance of Responsibility. If the defendant makes full
5 and complete disclosure to the U.S. Probation Office of the circumstances surrounding the
6 defendant's commission of the offense, and if the defendant demonstrates an acceptance
7 of responsibility for this offense up to and including the time of sentencing, the United
8 States will recommend a two-level reduction in the applicable Sentencing Guidelines
9 offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an offense level of 16
10 or more, the United States will move the Court for an additional one-level reduction in the
11 applicable Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(b).

12 d. Non-Binding Recommendations. The defendant understands that
13 recommendations are not binding on the Court. The defendant further understands that the
14 defendant will not be permitted to withdraw the guilty plea if the Court does not follow a
15 recommendation.

16 e. Stipulation: Sex Offender Conditions. Pursuant to Fed. R. Crim. P.
17 11(c)(1)(C), the United States and the defendant stipulate, and the defendant agrees, to the
18 following sex offender conditions during the term of supervised release: within three days
19 from release from prison, the defendant shall register as a sex offender in accordance with
20 tribal, state, and federal law in any jurisdiction in which he resides, is employed, or is a
21 student, and will provide the supervising probation officer with verification of registration.
22 During the term of supervised release, the defendant shall undergo sex offender treatment
23 and counseling as directed by the probation department and as ordered by the Court. Such
24 treatment may include physiological testing, including clinical polygraph testing. If the
25 probation department, and the Court, in determining the most appropriate sentence, deems
26 it appropriate, the defendant shall submit to a presentence sex offender evaluation pursuant
27 to 18 U.S.C. § 3552(b). Such sex offender evaluation shall be conducted under the
28 standardized conditions set forth by the examiner. Defendant's attorney shall not be

1 present during any part of the examination unless otherwise authorized by the examiner in
2 advance of said evaluation or as otherwise agreed upon between the parties in writing. The
3 parties agree that any statements used in connection with the examination shall not be used
4 in the instant prosecution or in any subsequent federal prosecution of the defendant in the
5 District of Arizona. As a condition of supervised release, the defendant shall cooperate in
6 the collection of a DNA sample as authorized in 18 U.S.C. § 3583(d).

7 f. Restitution. Pursuant to 18 U.S.C. § 3663, 3663A and/or 2248, the defendant
8 specifically agrees to pay full restitution to all victims in an amount to be determined by
9 the court, but in no event, more than \$1,000,000.00 per victim. "Victims" include persons
10 or entities directly or proximately harmed by defendant's "relevant conduct" including
11 conduct pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G.
12 §1B1.3, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§
13 2259, 3663, 3663(A) or 2248. Pursuant to 18 U.S.C. §§ 3663 and 3664(j)(1), "victims"
14 also include persons or entities (whether private or government: state, federal or tribal) that
15 have paid or costs related to defendant's conduct, including insurance providers and health
16 care providers (including those such as Medicaid, Medicare and AHCCCS). Even if the
17 victim did not suffer physical injury, the defendant expressly agrees to pay restitution for
18 expenditures and future expenses related to treatment for mental or emotional trauma
19 suffered by the victims. Such expenditures shall include, but are not limited to: mental
20 health treatment and counseling, in-patient treatment, and traditional Native American
21 ceremonies treatment. The defendant understands that such restitution will be included in
22 the Court's Order of Judgment and that an unanticipated restitution amount will not serve
23 as grounds to withdraw the defendant's guilty plea or to withdraw from this plea agreement.

24 g. Assets and Financial Responsibility. The defendant shall make a full
25 accounting of all assets in which the defendant has any legal or equitable interest. The
26 defendant shall not (and shall not aid or abet any other party to) sell, hide, waste, spend, or
27 transfer any such assets or property before sentencing, without the prior approval of the
28 United States (provided, however, that no prior approval will be required for routine, day-

1 to-day expenditures). The defendant also expressly authorizes the United States Attorney's
2 Office to immediately obtain a credit report as to the defendant in order to evaluate the
3 defendant's ability to satisfy any financial obligation imposed by the Court. The defendant
4 also shall make full disclosure of all current and projected assets to the U.S. Probation
5 Office immediately and prior to the termination of the defendant's supervised release or
6 probation, such disclosures to be shared with the U.S. Attorney's Office, including the
7 Financial Litigation Unit, for any purpose. Finally, the defendant shall participate in the
8 Inmate Financial Responsibility Program to fulfill all financial obligations due and owing
9 under this agreement and the law.

10 If the defendant is a member of a Native American tribe that provides "per capita"
11 payments to its members, the defendant agrees that any such "per capita" payment shall be
12 paid over to the Clerk of the Court and applied to the defendant's restitution obligation
13 until restitution to all victims is paid in full.

14 **4. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

15 a. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), the United States, at the time of
16 sentencing, shall dismiss the indictment.

17 b. This agreement does not, in any manner, restrict the actions of the United
18 States in any other district or bind any other United States Attorney's Office.

19 **5. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

20 a. If the Court, after reviewing this plea agreement, concludes that any
21 provision contained herein is inappropriate, it may reject the plea agreement and give the
22 defendant the opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P.
23 11(c)(5).

24 b. If the defendant's guilty plea or plea agreement is rejected, withdrawn,
25 vacated, or reversed at any time, this agreement shall be null and void, the United States
26 shall be free to prosecute the defendant for all crimes of which it then has knowledge and
27 any charges that have been dismissed because of this plea agreement shall automatically
28 be reinstated. In such event, the defendant waives any and all objections, motions, and

1 defenses based upon the Statute of Limitations, the Speedy Trial Act, or constitutional
2 restrictions in bringing later charges or proceedings. The defendant understands that any
3 statements made at the time of the defendant's change of plea or sentencing may be used
4 against the defendant in any subsequent hearing, trial, or proceeding subject to the
5 limitations of Fed. R. Evid. 410.

6 **6. WAIVER OF DEFENSES AND APPEAL RIGHTS**

7 The defendant waives (1) any and all motions, defenses, probable cause
8 determinations, and objections that the defendant could assert to the indictment or
9 information; and (2) any right to file an appeal, any collateral attack, and any other writ or
10 motion that challenges the conviction, an order of restitution or forfeiture, the entry of
11 judgment against the defendant, or any aspect of the defendant's sentence, including the
12 manner in which the sentence is determined, including but not limited to any appeals under
13 18 U.S.C. § 3742 (sentencing appeals) and motions under 28 U.S.C. §§ 2241 and 2255
14 (habeas petitions), and any right to file a motion for modification of sentence, including
15 under 18 U.S.C. § 3582(c) (except for the right to file a compassionate release motion under
16 18 U.S.C. § 3582(c)(1)(A) and to appeal the denial of such a motion). This waiver shall
17 result in the dismissal of any appeal, collateral attack, or other motion the defendant might
18 file challenging the conviction, order of restitution or forfeiture, or sentence in this case.
19 This waiver shall not be construed to bar an otherwise-preserved claim of ineffective
20 assistance of counsel or of "prosecutorial misconduct" (as that term is defined by Section
21 II.B of Ariz. Ethics Op. 15-01 (2015)).

22 **7. DISCLOSURE OF INFORMATION**

23 a. The United States retains the unrestricted right to provide information and
24 make any and all statements it deems appropriate to the U.S. Probation Office and to the
25 Court in connection with the case.

26 b. Any information, statements, documents, and evidence that the defendant
27 provides to the United States pursuant to this agreement may be used against the defendant
28 at any time.

1 c. The defendant shall cooperate fully with the U.S. Probation Office. Such
 2 cooperation shall include providing complete and truthful responses to questions posed by
 3 the U.S. Probation Office including, but not limited to, questions relating to:

- 4 (1) criminal convictions, history of drug abuse, and mental illness; and
 5 (2) financial information, including present financial assets or liabilities
 6 that relate to the ability of the defendant to pay a fine or restitution.

7 **8. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

8 a. Nothing in this agreement shall be construed to protect the defendant from
 9 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
 10 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
 11 monetary penalties, including restitution imposed by the Court, shall be due immediately
 12 upon judgment, shall be subject to immediate enforcement by the United States, and shall
 13 be submitted to the Treasury Offset Program so that any federal payment or transfer of
 14 returned property the defendant receives may be offset and applied to federal debts (which
 15 offset will not affect the periodic payment schedule). If the Court imposes a schedule of
 16 payments, the schedule of payments shall be merely a schedule of minimum payments and
 17 shall not be a limitation on the methods available to the United States to enforce the
 18 judgment.

19 **9. ELEMENTS**

20 **Abusive Sexual Contact of a Child**

21 On or about July 22 and July 23, 2023, in the District of Arizona:

- 22 1. The defendant knowingly engaged in sexual contact with the victim, a child
 23 under the age of 12;
 24 2. The sexual contact involved the defendant placing his finger on the victim's
 25 anus, with an intent to abuse, humiliate, harass, and degrade the victim, or
 26 arouse or gratify the sexual desire of the defendant;
 27 3. The offense occurred on an Indian Reservation, in Indian Country; and
 28

- 1 4. The defendant was an Indian at the time of the offense. Specifically, at the
2 time of the crime the defendant had some quantum of Indian blood and was
3 a member of or was affiliated with a federally-recognized tribe.
4

5 **10. FACTUAL BASIS**

6 a. The defendant admits that the following facts are true and that if this matter
7 were to proceed to trial the United States could prove the following facts beyond a
8 reasonable doubt:

9 On or about the night of July 22 into July 23, 2023, within the confines of
10 the Navajo Nation Indian Reservation, Indian Country, the defendant, Ty
11 O'Brien Shorty, knowingly engaged in sexual contact with the victim, Jane
12 Doe (whose real name is listed in the unredacted information). Jane Doe was
 four (4) years old at the time. The sexual contact involved the defendant
 placing his finger on Jane Doe's anus, with an intent to abuse, humiliate,
 harass, and degrade Jane Doe and to arouse and gratify his sexual desire.

13 The defendant was an Indian at the time of the crime. Specifically, he had a
14 sufficient quantum of Indian blood and was a member of and affiliated with
 a federally recognized tribe, namely the Navajo Indian Tribe.

15 b. The defendant shall swear under oath to the accuracy of this statement and,
16 if the defendant should be called upon to testify about this matter in the future, any
17 intentional material inconsistencies in the defendant's testimony may subject the defendant
18 to additional penalties for perjury or false swearing, which may be enforced by the United
19 States under this agreement.

20 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

21 I have read the entire plea agreement with the assistance of my attorney. I
22 understand each of its provisions and I voluntarily agree to it.

23 I have discussed the case and my constitutional and other rights with my attorney.
24 I understand that by entering my plea of guilty I shall waive my rights to plead not guilty,
25 to trial by jury, to confront, cross-examine, and compel the attendance of witnesses, to
26 present evidence in my defense, to remain silent and refuse to be a witness against myself
27 by asserting my privilege against self-incrimination, all with the assistance of counsel, and
28 to be presumed innocent until proven guilty beyond a reasonable doubt.

1 I agree to enter my guilty plea as indicated above on the terms and conditions set
2 forth in this agreement.

3 I have been advised by my attorney of the nature of the charges to which I am
4 entering my guilty plea. I have further been advised by my attorney of the nature and range
5 of the possible sentence and that my ultimate sentence shall be determined by the Court
6 after consideration of the advisory Sentencing Guidelines.

7 My guilty plea is not the result of force, threats, assurances, or promises, other than
8 the promises contained in this agreement. I voluntarily agree to the provisions of this
9 agreement and I agree to be bound according to its provisions.

10 I understand that if I am granted probation or placed on supervised release by the
11 Court, the terms and conditions of such probation/supervised release are subject to
12 modification at any time. I further understand that if I violate any of the conditions of my
13 probation/supervised release, my probation/supervised release may be revoked and upon
14 such revocation, notwithstanding any other provision of this agreement, I may be required
15 to serve a term of imprisonment or my sentence otherwise may be altered.

16 This written plea agreement, and any written addenda filed as attachments to this
17 plea agreement, contain all the terms and conditions of the plea. Any additional
18 agreements, if any such agreements exist, shall be recorded in a separate document and
19 may be filed with the Court under seal; accordingly, additional agreements, if any, may not
20 be in the public record.

21 I further agree that promises, including any predictions as to the Sentencing
22 Guideline range or to any Sentencing Guideline factors that will apply, made by anyone
23 (including my attorney) that are not contained within this written plea agreement, are null
24 and void and have no force and effect.

25 I am satisfied that my defense attorney has represented me in a competent manner.

26 I fully understand the terms and conditions of this plea agreement. I am not now
27 using or under the influence of any drug, medication, liquor, or other intoxicant or
28

1 depressant that would impair my ability to fully understand the terms and conditions of this
2 plea agreement.

3 5.16.24

4 Date


5 
Ty O'Brien Shorty
Defendant

6 **APPROVAL OF DEFENSE COUNSEL**

7 I have discussed this case and the plea agreement with my client in detail and have
8 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the
9 constitutional and other rights of an accused, the factual basis for and the nature of the
10 offense to which the guilty plea will be entered, possible defenses, and the consequences
11 of the guilty plea including the maximum statutory sentence possible. I have further
12 discussed the concept of the advisory Sentencing Guidelines with the defendant. No
13 assurances, promises, or representations have been given to me or to the defendant by the
14 United States or any of its representatives that are not contained in this written agreement.
15 I concur in the entry of the plea as indicated above and that the terms and conditions set
16 forth in this agreement are in the best interests of my client. I agree to make a bona fide
17 effort to ensure that the guilty plea is entered in accordance with all the requirements of
18 Fed. R. Crim. P. 11.

19 4/25/24

20 Date

21 
Jeffrey A. Williams
Attorney for Defendant

APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

GARY M. RESTAINO
United States Attorney
District of Arizona

Jillian Besancon

JILLIAN BESANCON
2024.04.26 11:49:09 -07'00'

Date

Jillian Besancon
Assistant U.S. Attorney

ACCEPTANCE BY THE COURT

11/7/2024
Date

John J. Tuchi
Honorable John J. Tuchi
United States District Judge